

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 294  
SPONSOR: Judiciary Committee and Senator Crist  
SUBJECT: Protective Injunctions  
DATE: March 19, 2003 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matthews</u>	<u>Roberts</u>	<u>JU</u>	<u>Favorable/CS</u>
2.	<u>                    </u>	<u>                    </u>	<u>CJ</u>	<u>                    </u>
3.	<u>                    </u>	<u>                    </u>	<u>CF</u>	<u>                    </u>
4.	<u>                    </u>	<u>                    </u>	<u>ACJ</u>	<u>                    </u>
5.	<u>                    </u>	<u>                    </u>	<u>AP</u>	<u>                    </u>
6.	<u>                    </u>	<u>                    </u>	<u>                    </u>	<u>                    </u>

## I. Summary:

This bill is cited as “The Victim’s Freedom Act.” It creates a specific cause of action for protective injunctive relief against *sexual violence* if the person is a victim of *sexual violence* and:

- The victim has reported the incident to law enforcement and is cooperating in any criminal proceeding against the offender, or
- The victim’s sexual violence offender’s state prison term is expired or will expire within 90 days following the filing of the petition for protective injunctive relief.

Additionally, the bill creates a definition for *sexual violence* which is inclusive of sexual offenses under chapters 787, 794, 800, and 827, F.S. and any forcible felony offenses involving a sexual act. The bill prohibits the assessment of filing fees and service charges for injunctions against *dating violence*, *repeat violence* and *sexual violence* but allows for the clerks of the court to seek reimbursement, subject to legislative appropriation, of which a portion must be allocated to law enforcement for cost of service of process of the injunction. The bill further allows a correctional officer in lieu of a law enforcement officer to serve process of a sexual violence injunction against an offender who is in prison. The injunction statewide verification system is also redesignated as the “Violence Injunction Statewide Verification System.”

The bill makes conforming changes to various provisions regarding injunctions as affect reporting of existing injunctions, criminal background and history checks of injunctions, violations of injunctions to reflect their application to the statutorily recognized injunctions against *domestic violence*, *repeat violence*, *dating violence* and *sexual violence*.

This bill amends sections 61.1825, 61.1827, 741.2901, 741.30, 741.31, 741.315, 784.046, 784.047, 784.048, 901.15, 921.0022(g), and 943.01, of the Florida Statutes.

## II. Present Situation:

### Protective Injunctive Relief Against Violence

Florida law currently grants protective injunctive relief based on three underlying categories of violence. A person may obtain a protective injunction against *domestic violence*, *dating violence*, or *repeat violence* as follows:

- a) *Domestic violence*: A victim of *domestic violence* or a person who has reasonable cause to believe that she or he is in imminent danger of becoming a victim of *domestic violence* may obtain a protective injunction. See s. 741.30, F.S. *Domestic violence* is defined as violence between family or household members which includes spouses, former spouses, persons related by blood or marriage, familial co-residents, and married or unmarried persons who share a child together. See s. 741.28, F.S. With the exception of persons who share a child together, there is a requirement that the persons have resided or currently reside together.
- b) *Repeat Violence*: A victim of *repeat violence* who has reasonable cause to believe he or she is in imminent danger of re-victimization by violence may obtain a protective injunction. A victim who is a minor may by or through his or her parent or legal guardian also seek a protective injunction against *repeat violence*. See s. 784.046, F.S. *Repeat violence* is defined as two or more incidents of violence or stalking, one of which must have occurred in the last 6 months.
- c) *Dating violence*: Since 2002, a victim of *dating violence* can obtain protective injunctive relief if the victim has reasonable cause to believe she or he is in imminent danger of re-victimization, or if a person has reasonable cause to believe she or he is in imminent danger of becoming the victim of *dating violence*. See ch. 2002-55, L.O.F. A parent or legal guardian may also seek a protective injunction against *dating violence* on behalf of a minor child living at home. “*Dating violence*” is defined as violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature. The court must consider the following factors in determining whether there is a dating relationship for purposes of the injunction:
  1. A dating relationship must have existed within the past 6 months;
  2. The nature of the relationship must have been characterized by the expectation of affection or sexual involvement between the parties; and
  3. The frequency and type of interaction between the persons involved in the relationship must have included that the persons have been involved over time and on a continuous basis during the course of the relationship.

Protective injunctive relief against *dating violence* is not available to a person who is a victim of violence arising in a casual acquaintanceship or between individuals who only have engaged in ordinary fraternization in a business or social context.

The term “violence” as used in each of these types of injunctions refers to any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, or false imprisonment, or any criminal offense resulting in physical injury or death, by a person against any other person. Stalking is the willful, repeated

and malicious following or harassment of one person by another. Aggravated stalking, which requires proof of an additional element, is a third degree felony. The additional element required to prove aggravated stalking is either: (1) that the victim was a minor under 16 years of age; (2) that the offender was subject to an injunction or other court-imposed prohibition of conduct toward the victim or the victim's property; or (3) that the offender makes a credible threat with the intent to place the victim in reasonable fear of death or bodily injury.

### **Filing Fees for Protective Injunctions Against Violence**

The law prohibits the assessment of a filing fee for any person seeking a protective injunction against *domestic violence*. See s. 741.30(2), F.S. Subject to legislative appropriation, however, the clerks of the court can submit on a quarterly basis a request for reimbursement from the Office of State Courts Administrator. The rate is limited to \$40 per petition. Of each \$40 recovered, a maximum of \$20 must be forwarded to the law enforcement agency responsible for the service of process. As to injunctions against *dating violence* or *repeat violence*, filing fees to the clerk of the court and service of process charges to the sheriff or law enforcement agency are assessed. However, they may be waived and frequently are upon the submission of an affidavit of insufficient funds by the petitioner. See s. 784.046(3), F.S.

### **Service of Process of Injunctions**

Under current law, process must be served by the sheriff's office of each county. See s.48.021, F.S. Each county's sheriff's office maintains a list of approved special process servers who satisfy the statutory requirements. The law prohibits service or execution of an injunction by anyone other than a law enforcement officer as defined under chapter 943, F.S. See s. 784.046(8), F.S. A law enforcement officer is defined as any person elected, appointed or employed full time by a local or state governmental entity vested with authority to carry weapons, make arrests, detection and prevention of crime and supervisory or management responsibilities of law enforcement officers. Service of process upon a state prisoner must be served upon the prisoner. See s. 48.051, F.S.

### **Injunction Statewide Verification System**

Information regarding protective injunctions issued against *domestic violence*, *repeat violence* and *dating violence* must be submitted to the Criminal Justice Information Program within the Department of Law Enforcement for input into "The Domestic, Dating and Repeat Violence Injunction Statewide Verification System." See s. 784.046(8), F.S. This system allows for the electronic transmission of information to and between criminal justice agencies relating to *domestic violence* injunctions, *dating violence* injunctions and *repeat violence* injunctions issued by the court throughout the state. The statutes set forth the process for what happens to the injunction for protection after it is entered and delivered to the proper authorities.

According to the Florida Department of Law Enforcement, there were 90,500 active protection orders on file in the state system as of January 2, 2003. The current injunction statewide verification system does not track nor have the capability to track the injunctions according to the type of violence. One must look to the protective injunction in the county from which it was issued to determine the underlying nature of the injunction.

### III. Effect of Proposed Changes:

This bill creates “The Victim’s Freedom Act.” The bill expands the provisions of section 784.046, F.S., which currently relates to injunctions against *repeat violence* and *dating violence*. A specific cause of action is created for protective injunctive relief against *sexual violence*. *Sexual violence* is defined as constituting a single incident of:

- Sexual battery under chapter 794, F.S.,
- Lewd and lascivious conduct under chapter 800, F.S.,
- Luring and enticement of a child under chapter 787, F.S.
- Sexual performance by a child under chapter 827, F.S.
- Forcible felony involving an actual or attempted sexual act.

Either the victim of *sexual violence* or the parent or guardian of a minor child who is a victim of *sexual violence* may petition for protective injunctive relief under one of two scenarios:

- If the person reported the *sexual violence* to a law enforcement agency and is cooperating in a criminal proceeding, or
- If the victim’s *sexual violence* offender’s term in state prison has expired or is about to expire within 90 days following the filing of the petition for protective injunctive relief. (The bill also does not address how the victim would necessarily know or learn about an offender’s impending release from state prison.)

The bill also prohibits the assessment of filing fees for injunctions against *dating violence*, *repeat violence* and *sexual violence* as is currently the case with petitions for injunctive relief against *domestic violence*. However, the bill provides that subject to legislative appropriation, the clerks of the court may seek from the Office of State Courts Administrator reimbursement of \$40 per petition. A cap of \$20 must in turn be paid to the law enforcement agency to cover the cost of serving process for the injunction against *dating violence*, *repeat violence* and *sexual violence*.

The current statutory provisions governing protective injunctive relief including the form for the petition for relief are amended to include the new injunction against *sexual violence*. This means that whatever relief is available for an injunction against *dating violence* or *repeat violence* would apply to an injunction against *sexual violence*.

Under the bill, the authority to serve an injunction against *sexual violence* upon a state prisoner is shifted from a law enforcement officer to a correctional officer at the state prison. In those scenarios in which the offender is still in the custody of the Department of Corrections presumably for the sexual offense committed against the victim of *sexual violence*, the clerk of the court is required to send copies of a petition for injunctive relief, the notice of hearing and the temporary injunction (if issued) to the department to be served upon the offender by the correctional officer. The bill does not specify to which unit or division the documents should be forwarded. If the *sexual violence* offender is not served before his or her release, the copies have to be forwarded to the sheriff of the county where the offender is released. As with other categories of violence injunctions, if the injunction against *sexual violence* is violated, the offender must be arrested and held in custody until court resolution.

The period for the effect of an ex parte temporary injunction against *sexual violence* based on the expiration of an offender's state prison term is set at 15 days from the day the offender is released from state prison in lieu of 15 days from the date of issuance as is the case with other injunctions.

The bill also conforms or reenacts the following statutory provisions regarding injunctions reported to the statewide verification system, background checks into past or current injunctions and violations thereto, and the elements of offenses for violations of injunctions to reflect their application to the statutorily recognized injunctions against *domestic violence*, *repeat violence*, *dating violence* and *sexual violence* (as created under this bill), and to reflect the renamed statewide verification system for reporting injunctions:

- ✓ Section 61.1825, F.S., is amended to require that family violence indicators be placed on Title-IV child support cases in the registry if there is an injunction against *dating violence* *sexual violence*. The section is also amended to reflect the redesignation of the Domestic Violence and Repeat Violence Injunction Statewide Verification System as the "Violence Injunction Statewide Verification System."
- ✓ Section 61.1827, F.S., is reenacted to incorporate amendments made to ss.61.1825, 741.31, and 784.046, Florida Statutes.
- ✓ Section 741.2901(3), F.S., is amended to also require a state attorney in a *domestic violence* investigation to check into a defendant's history for injunctions against *dating violence* and *sexual violence*.
- ✓ Section 741.30, F.S., is amended to reflect the newly named "Violence Injunction Statewide Verification System."
- ✓ Section 741.31, F.S., relating to violations of injunctions against *domestic violence*, is reenacted to incorporate and conform to the changes made to s. 741.2901 and 741.315, F.S.
- ✓ Section 741.315, F.S., is amended to clarify that *repeat violence* injunctions, *dating violence* injunctions, and *sexual violence* injunctions entered by a court of a foreign state are to be accorded full faith and credit as are currently accorded injunctions against domestic violence.
- ✓ Section 775.084(1), F.S., is reenacted to incorporate the amendments to 784.048, F.S., governing the underlying elements for violations of aggravated stalking to enhance penalties for and mandatory minimum prison terms for habitual offenders and violence career criminals.
- ✓ Section 784.047, F.S., is amended to create a first-degree misdemeanor for violation of an injunction against *sexual violence* which is currently the offense for violation of an injunction against *dating violence* or *repeat violence* as granted under s. 784.046, F.S.
- ✓ Section 784.048, F.S., relates to the elements of the third-degree felony offense of aggravated stalking. It is amended to add that the violation of a *sexual violence* injunction constitutes an

underlying element of aggravated stalking when the person knowingly, willfully, maliciously, and repeatedly follows or harasses another person after such injunction is issued.

- ✓ Section 790.06, F.S., is amended to reflect that the existence of a *dating violence* injunction and a *sexual violence* injunction may be the basis for denying or suspending a license or application for a firearm which is currently the case for *domestic violence* injunctions and *repeat violence* injunctions.
- ✓ Section 790.065, F.S., is amended to require criminal background checks during the sale and delivery of firearms to include a review of records for existing injunctions against *sexual violence* which is currently done for injunctions against other types of violence.
- ✓ Section 901.15, F.S., is amended to allow the warrantless arrest of a person under specified circumstances when there is probable cause to believe that the person has violated an injunction against *sexual violence* which is already the case for violations of injunctions against *repeat violence* and *dating violence* or a foreign protection order.
- ✓ Section 921.0022(3)(g), F.S., relating to the offense severity ranking chart for sentencing under the criminal punishment code, is reenacted to incorporate and conform to the changes made to s. 784.048(4), F.S., which add *dating violence* and *sexual violence* as an underlying element for the third-degree felony offense of aggravated stalking.
- ✓ Section 943.05(2), F.S., is amended to reflect the addition of injunctions against *sexual violence* and *dating violence* to the list of injunctions to be reported to the statewide verification system of the Criminal Justice Information Program which is already required when there are injunctions against *domestic violence* and *repeat violence*. It is also amended to reflect the name of the injunction statewide verification system.

The act takes effect on July 1, 2003.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

##### **D. Constitutional Issues:**

The 1998 amendment (Revision 7) to Article V of the Florida Constitution shifts major costs of Florida's judicial system from the counties to the state. *See* s.14, art. V, Fla.

Const. It sets out specific and added costs to be borne solely by the state, certain costs to be borne fully by the counties, and other costs to be paid from fees. Additionally, it will require the Clerks of Court to be substantially funded through filing fees, service charges and costs. In light of the impending identification, determination and categorization by the Legislature of these fees and costs, it is not exactly clear whether and how any fees prohibited by this bill may impact anticipated operational activities and current funding resources for the court and the clerks of the court.

The bill provides that a *sexual violence* injunction against a state prisoner is effective 15 days from the day the state prisoner is released. There may be due process considerations arising from failure or improperly delivered service of process if a state prisoner is released and for whatever reason is not personally or timely served notice of the petition for injunction and hearing, and temporary injunction, (if issued prior to his or her release). The state prisoner risks unintended violation of the terms of the injunction between the time he or she is released and the documents are forwarded to the sheriff's office in the county indicated in the state prisoner's release plan.

## V. Economic Impact and Fiscal Note:

### A. Tax/Fee Issues:

None.

### B. Private Sector Impact:

The bill may benefit victims of *sexual violence* who are otherwise currently unable to petition for protective injunctive relief as a victim of *domestic violence*, *dating violence*, or *repeat violence*. It is indeterminate how many persons would be eligible to obtain this new category of protective injunctive relief against *sexual violence*. According to the Office of State Courts Administrator, during the Fiscal Year 2001 - 2002, there were 4,081 criminal filings that involved sexual offenses as defined in their Summary Reporting System. The number of filings reflects the minimum number of persons who could be eligible for an injunction against *sexual violence* since an injunction may be sought regardless of whether criminal charges were filed, reduced, or dismissed by the state attorney, provided the victim reported the offense.

The creation of a new category of specific protective injunctive relief against *sexual violence* expands the availability of relief for persons against violence. As exists under current law, there are different thresholds depending on the underlying nature of the violence. There may still be categories of victims of violence (such as between casual acquaintances, between neighbors, or between individuals who engage in ordinary fraternization or social context).who may not be able to obtain protective injunctive relief against violence.

### C. Government Sector Impact:

There are elements of the bill that may impact the workload of the state court system, the clerks of the court, and the law enforcement community including the Department of Law

Enforcement, the Department of Corrections, and the Sheriffs' Offices. The expansion of the category of persons entitled to seek protective injunctive against violence by the creation of the specific cause of action for victims of sexual violence may result in a significant increase of petition filings and protective injunction orders.

According to the Office of State Courts Administrator, the amount of filing fees for injunctions varies from county to county. It is not possible to determine exact revenue loss from filing fees for repeat violence and dating violence injunctions although based on the number of such petitions (20,567) in the Fiscal Year 2001-2002, the elimination of these filing fees may also result in a loss of revenue currently collected by the clerks of court and the counties, if sufficient general revenue funds are not appropriated.

The Department of Corrections reports concerns regarding the availability of protective injunctive relief against *sexual violence* to inmates in prison which could affect the orderly operation of the institutions and could be used to harass other inmates or staff. The department also suggests that the bill specify the procedural requirements for service of process by a correctional officer, identify the position or unit within the department for receipt of documents for service of process, and provide immunity.

#### **VI. Technical Deficiencies:**

None.

#### **VII. Related Issues:**

- This bill creates a specific cause of action for protective injunctive relief against *sexual violence* if the victim's offender's state prison term is expired or about to expire. The term "state prison" is to be construed as meaning and referring to custody in the Department of Corrections within the state correctional system including those facilities operated by private entities with which the department enters into contracts pursuant to s. 944.105, F.S. *See* s. 944.08, F.S. If a victim's offender serves time in a facility such as in a city or county jail, or an adult or juvenile detention center, the victim may not get this protective injunctive relief.
- Under the bill, the authority to serve an injunction against *sexual violence* upon a state prisoner is given to a correctional officer at the state prison. Current law requires law enforcement officers are exclusively designated to serve process, particularly of an injunction. Correctional officers are not law enforcement officers and as such may not have the same standards or have in place the same policies and practices for serving process.

#### **VIII. Amendments:**

None.